S.B.CIVIL WRIT PETITION NO.422/1995

Janak Ram Damri
V.
State of Rajasthan & Ors.

DATE OF ORDER :: 18th January, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. S.N.Trivedi, for the petitioner.

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By this petition for writ a challenge is given to the order dated 3.8.1994 passed by the Commissioner, Municipal Council, Sriganganagar reverting the petitioner from the post of Sanitary Inspector to his original post i.e. of Sanitary Inspector Gr.II.

In brief, the facts of the case are that by an order dated 21.6.1993 the Commissioner, Municipal Council, Sriganganagar in pursuant to the resolution No.5 of the Municipal Council dated 17.3.1993 promoted the petitioner as Sanitary Inspector Gr.I in the pay scale of Rs.1400-2600 for a period of one year or till the meeting of the promotion board takes place. The Government of Rajasthan by an order dated 12.7.1994 instructed the Administrator, Municipal Council, Sriganganagar to revert the persons promoted in the year 1993-94 despite non availability of budget for the posts concerned. In pursuant to the instructions given by Government of Rajasthan under the communication dated 12.7.1994 the Commissioner,

Municipal Council, Sriganganagar passed the order impugned dated 3.8.1994 reverting the petitioner to his original post. By the same order the respondent Municipal Council also ordered to effect recovery from pay of the petit9oner for the amount said to be paid in excess because of irregular of promotion of the petitioner as Sanitary Inspector Gr.I. Instant petition for writ is preferred giving challenge to the order aforesaid.

A reply to the writ petition has been filed on behalf of the respondents stating therein that the appointment was given to the petitioner by way of promotion in accordance with the provisions of Rule 27 of the Rajasthan Municipal Subordinate and Ministerial Staff Service Rules, 1963 (hereinafter referred to as “the Rules of 1963”) and, therefore, he was having no right to continue on the post concerned beyond a period of one year. It is also averred that the promotion was given erroneously as there was no budget sanctioned for the post concerned.

Heard counsel for the petitioner.

It is the position admitted that the promotion was given to the petitioner in accordance with the provisions of Rule 27 of the Rules of 1963 on urgent temporary basis for a period of one year, as such it cannot be said that appointment of the

petitioner by way of promotion as Sanitary Inspector Gr.I was in contravention of the Rules. An appointment may be of regular nature or of temporary nature, if is made in accordance with the rules, then it cannot be said to be an irregular appointment/promotion. In view of it the order impugned to the extent it relates to recovery of amount said to be paid in excess to the petitioner on holding the post of Sanitary Inspector Gr.I, is manifestly illegal. The petitioner even beyond the period of one year, if has worked as Sanitary Inspector Gr.I, then the recovery for the amount against the work done cannot be made.

The order dated 21.6.1993 whereby promotion was given to the petitioner as Sanitary Inspector is an order passed under Rule 27 of the Rules of 1963 and any appointment given as such cannot run beyond a period of one year if the same is not placed before the competent authority for its extension.

In the instant matter the appointment of the petitioner by way of promotion as Sanitary Inspector Gr.I was only for a period of one year and in subsequent year there was no budget available for the post concerned, therefore, I do not find any illegality in reversion of the petitioner to his original post i.e. Sanitary Inspector Gr.II.

In view of it, this petition for writ is accepted in part. The order impugned dated 3.8.1994 is declared illegal to the extent it orders to effect recovery from the petitioner for the amount said to be paid in excess while holding the promotional post i.e. of Sanitary Inspector Gr.I.

No order to costs.

(GOVIND MATHUR),J.

kkm/ps.